

## 1.0 INTRODUCTION

The City of Portland (City) has submitted an application to the National Marine Fisheries Service (NMFS) for an Incidental Take Permit (ITP) in accordance with section 10(a)(1)(B) of the Federal Endangered Species Act (ESA), as amended. The City is seeking this authorization so that activities associated with implementing the *Bull Run Water Supply Habitat Conservation Plan* (Bull Run HCP or Proposed Action) comply with the ESA, while providing protection for four<sup>1</sup> species listed under the ESA. The species and their status appear in Table 1-1.1.

Table 1-1.1 Proposed covered species in the Bull Run HCP

Common Name	Scientific Name	Status <sup>1</sup>
<b>Fish</b>		
Lower Columbia River Chinook Salmon (Spring and Fall)	<i>Oncorhynchus tshawytscha</i>	T
Lower Columbia River Steelhead	<i>Oncorhynchus mykiss</i>	T
Lower Columbia River Coho Salmon	<i>Oncorhynchus kisutch</i>	T
Columbia River Chum Salmon	<i>Oncorhynchus keta</i>	T

<sup>1</sup>Status Codes: T = Threatened

Since the proposed issuance of an ITP would be a Federal action that may affect the human environment, this issuance is subject to review under the National Environmental Policy Act (NEPA). NEPA provides an interdisciplinary framework for Federal agencies to evaluate environmental consequences of programs and projects over which they have discretionary authority. The National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA) is the Lead Agency under NEPA for issuance of the ITP described below. The U.S. Forest Service (USFS, specifically the Mt. Hood National Forest) is a Federal cooperating agency. This Environmental Impact Statement (EIS) evaluates the impacts of issuing an ITP and implementing the *Bull Run Water Supply Habitat Conservation Plan*.

The Bull Run HCP was prepared in support of the City's application for an ITP to cover the continued operation and maintenance of the Bull Run water supply system. The City requests coverage for the incidental take of listed covered species for a term of 50 years. The HCP would provide measures to minimize and mitigate impacts of the proposed incidental taking of listed covered species and the habitats upon which they depend for the full 50-year term.

This section provides a brief introduction to this EIS, including describing the purpose and need for the action (Subsection 1.1). This section also describes the project background (Subsection 1.2) and the environmental review process and project scoping activities (Subsection 1.3).

## **1.1 Purpose and Need**

This section presents the purpose and need for the action (in accordance with NEPA requirements).

### **1.1.1 Purpose of the Proposed Action**

The purpose of the proposed action is to enable the City to continue to operate the Bull Run water supply system on a long term basis while complying with the ESA. If granted, the proposed ITP would authorize the incidental take of listed covered species.

### **1.1.2 Need for the Proposed Action**

The need for the proposed action is to provide broader protection and conservation for listed, proposed, and unlisted species, than is available under Section 9 of the ESA while managing the Bull Run water supply system on a long-term basis. The City's needs and goals are to 1) provide cost-effective minimization and mitigation measures for incidental take, 2) ensure an adequate long-term water supply at reasonable cost to ratepayers, 3) comply with state water quality standards and total maximum daily load (TMDL<sup>2</sup>) designations for the Bull Run River and Sandy River Basin, and 4) to protect identified unlisted species that the City believes could become listed during the 50-year period of the Bull Run HCP. NMFS needs and goals are to conserve listed species and their habitats and associated species during the City's proposed activities to ensure compliance with the ESA and other applicable laws and regulations. The following subsections describe applicable regulations.

#### **1.1.2.1 Endangered Species Act**

The 1973 Endangered Species Act (16 U.S.C. 1531-1544) provides for the conservation of ecosystems (both through Federal action and by encouraging the establishment of state programs) on which threatened and endangered species of fish, wildlife, and plants depend. The ESA is enforced by NMFS

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<sup>1</sup> The Bull Run HCP states that there are five covered species, differentiating between fall and spring Chinook salmon.

However, this EIS states that there are four covered species because fall and spring Chinook salmon are the same species.

<sup>2</sup> Section 303(d) of the Clean Water Act requires that states develop Total Maximum Daily Loads (TMDLs) for surface waters that do not meet and maintain applicable water quality standards. A TMDL sets the amount of a given pollutant that the water body can withstand without creating an impairment of that surface water's designated use.

(with jurisdiction over anadromous fish and marine fish and mammals) and by the U.S. Fish and Wildlife Service (USFWS) (with jurisdiction over plants, wildlife, and resident fish).

Section 9 of the ESA and accompanying Federal regulations prohibit the unauthorized take of fish and wildlife species listed as threatened or endangered by government, private companies, or individuals. As defined in the ESA, take means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or to attempt to engage in such conduct.” The term can also include modification to the habitat of a listed species that results in the death or injury of that species, or the impairment of essential life functions.

In recognition that take cannot always be avoided, section 10(a)(1)(B) of the ESA allows NMFS and the USFWS to authorize take of endangered and threatened species by non-Federal entities that is incidental to, but not the purpose of, otherwise lawful activities. Take authorization is granted through the issuance of an ITP. The City is seeking an ITP from NMFS. To issue a permit, NMFS must determine that the following criteria are met:

- The taking would be incidental to otherwise lawful activities.
- The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.
- The applicant will develop an HCP and ensure that adequate funding for the HCP will be provided.
- The taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild.
- The applicant will comply with any other measures that NMFS may require as being necessary or appropriate.

Issuance of an ITP is also subject to section 7 of the ESA. Section 7(a)(2) requires all Federal agencies, in consultation with NMFS and the USFWS, to ensure that any action “authorized, funded, or carried out” by any agency “is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification” of critical habitat. Because issuance of a section 10 permit involves a Federal authorization, it is subject to this provision.

Therefore, NMFS will conduct an internal consultation pursuant to section 7, and will consult, if necessary, with the USFWS for species not under NMFS jurisdiction. Although the provisions of section 7 and section 10 of the ESA are similar, section 7 requires an analysis of indirect effects, effects

on federally listed plants, and effects on critical habitat. The results of the analysis will be documented in a biological opinion.

#### **1.1.2.2 Clean Water Act**

The Clean Water Act of 1977 is the principal Federal legislation designated to protect the quality of the nation's waters. The purposes of the Clean Water Act include "the protection and propagation of fish, shellfish, and wildlife." The U.S. Environmental Protection Agency (EPA) is charged with implementing most of the Clean Water Act requirements, although the Clean Water Act includes provisions for states to assume much of the implementation responsibility. In Oregon, Clean Water Act implementation is under the authority of the Oregon Department of Environmental Quality (ODEQ). Section 303 of the Clean Water Act contains the provisions for establishing and meeting water quality standards. Under section 303(d) of the Clean Water Act, states, territories, and authorized Indian tribes are to submit lists to the EPA detailing water bodies for which existing pollution controls are insufficient to attain or maintain water quality standards. Impaired water bodies must be ranked, taking into account the severity of the pollution and the beneficial uses of such waters. After submitting the list of "impaired waters," also referred to as a 303(d) list, EPA or the authorized state must develop a TMDL plan to limit excess pollution.

A TMDL represents the greatest pollutant load that a water body can assimilate and still meet water quality standards and designated beneficial uses. Within the TMDL process, states assess water quality problems, identify contributors to these problems, and establish actions needed to achieve water quality objectives. The focus is on setting TMDLs for specific pollutants throughout the watercourse.

ODEQ designated several segments of the Sandy River, including 6 miles of the lower Bull Run River, as "water quality limited" because summer water temperatures are too high for salmon and steelhead. ODEQ completed a Water Quality Management Plan in 2005 to provide a strategy for reducing pollutant discharges to comply with the TMDL allocations determined for the Sandy River and as required by the Clean Water Act. The City's HCP provides a temperature management plan that is intended to comply with the requirements of ODEQ's TMDL and Water Quality Management Plan.

#### **1.1.2.3 NEPA**

The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), requires that all Federal agencies proposing major actions with potential significant effects on the quality of the human environment prepare a detailed statement of environmental effects. NMFS has determined that an environmental impact statement review is appropriate for this proposed action. NMFS implements

NEPA by cooperating with Federal, state, and local agencies, the public, and private organizations in making informed environmental decisions to conserve, protect, and enhance fish and wildlife and their habitats for the continued benefit of the public.

## **1.2 Project Background**

The Bull Run Watershed has been used by the City for water supply since 1895. The City's water system provides water to residents and businesses within the city limits of Portland (retail supply) as well as to a number surrounding communities (wholesale supply). Approximately 800,000 Oregonians receive all or part of their water supply from the Bull Run Watershed. The Bull Run water supply system is the largest municipal water supply system in the state.

The Bull Run watershed is located east of downtown Portland, in the foothills of the Cascade Mountains, and northwest of Mt. Hood (Figure 1.1-1 shows the location of the project area and its relationship to the surrounding region). The Bull Run River is a major tributary of the Sandy River; the Sandy River flows into the Columbia River. This watershed plays a role in supporting the larger aquatic ecosystem of the Sandy River Basin.

Three key factors helped shaped the context for the City's decision to develop an HCP: ESA species listings, Clean Water Act compliance, and water supply reliability and affordability (see Section 2.1 of the Bull Run HCP for more detailed information on the recent history leading to the development of the Bull Run HCP). Foremost were the listings of the anadromous fish and the associated ESA regulatory requirements. In addition to ESA, the City also has regulatory obligations under the Clean Water Act that are specific to the Bull Run River for water temperature. Maintaining the reliability of the Bull Run water supply and affordability of water rates for local retail and wholesale customers are significant considerations in the management of the Bull Run Watershed.

The City is proposing specific activities or projects for which take authorization would be provided. Covered activities under the Bull Run HCP are summarized below and discussed in more detail in Subsection 2.2.2.2, Covered Activities:

### **1.2.1 Operation, Maintenance, and Repair of the Water System**

The City is proposing that incidental take coverage include all activities associated with the continued operation and maintenance of the water supply system.

### **1.2.2 Habitat Conservation, Research, and Monitoring Measures**

The City is proposing that incidental take coverage include all activities associated with the implementation of the habitat conservation measures and the research and monitoring measures. Any additional habitat conservation measures and monitoring measures implemented as a part of adaptive management would also be covered.

### **1.2.3 Incidental Land Management Activities**

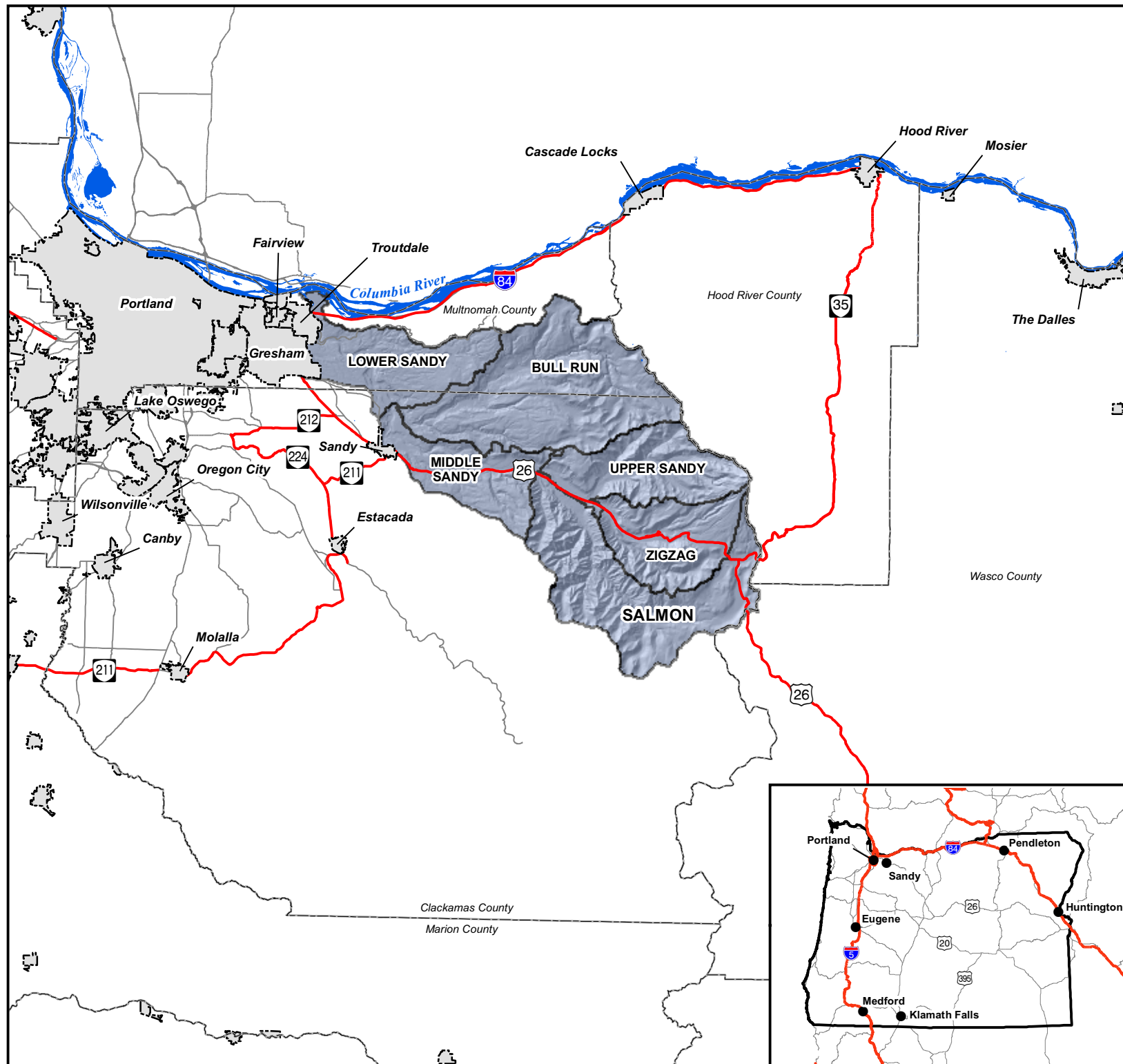
The City also seeks coverage for incidental land management activities on lands within the Sandy River Basin. These activities include management of City-owned riparian lands; maintenance and repair of City roads, bridges, culverts, parking lots, easements, and rights-of-way on non-Federal lands in the Bull Run watershed; and operation and maintenance of the Sandy River Station maintenance facility.

## **1.3 Environmental Review Process**

### **1.3.1 Process Steps**

The decision to be made by NMFS is whether to approve the Bull Run HCP and issue an ITP for the federally listed species that are under its jurisdiction. Section 10(a)(2)(B) of the ESA requires that specific criteria be met before NMFS may issue an ITP (as described in Subsection 1.1.2.1, Endangered Species Act). The determination as to whether the criteria have been met will be described in NMFS' decision documents, including an ESA section 10 findings document, an ESA section 7 Biological Opinion, and a NEPA Record of Decision. The following items summarize the process steps required before NMFS would issue an ITP:

- Publication of the Notice of Intent to inform interested parties that public scoping meetings are going to be held and that an EIS is being prepared
- Completion of the Draft EIS and concurrent release of the Draft EIS and Bull Run HCP for public review
- Commencement of the public review period and submission of comments on the Draft EIS to NMFS
- Incorporation of public comments into a Final EIS and publication of the Final EIS
- NMFS consultation and determination on ESA section 7 findings and tribal consultations



## Key Boundaries

- Major Roads
- Major Highways
- Sandy River Basin
- Counties
- City Limits

Projection:  
State Plane Oregon North Feet  
North American Datum 1983

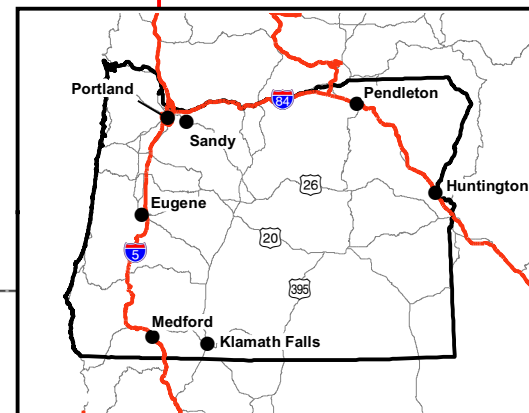
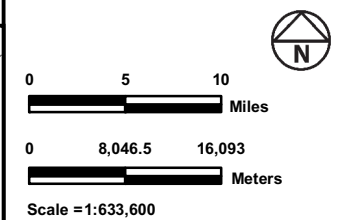


Figure 1.1-1  
Regional Location  
Bull Run HCP EIS





- NMFS preparation and signature of a Record of Decision in consultation with the cooperating agency (Mt. Hood National Forest)
- NMFS issuance of ITP

### **1.3.2 Scoping**

#### **1.3.2.1 EIS Public Outreach**

To solicit participation of responsible and coordinating Federal, state, and local agencies and of the public in determining the scope of this EIS, a Notice of Intent was published in the *Federal Register* on March 27, 2006 (Vol. 71, No. 58). Publication of the Notice of Intent initiated the process of public scoping for this EIS. A copy of the Notice of Intent is included in Appendix A.

Two public scoping meetings were held in June 2006 in Portland to solicit input on the potential topics to be addressed in this EIS, the range of project alternatives, and possible mitigation measures. Prior to these two scoping meetings, a news release was distributed to local news agencies describing when and where each scoping meeting would be held. Notice was also posted on the City of Portland Web site. In addition, an interested-parties letter was mailed out to individuals or agencies that were identified as possible stakeholders, including local tribal leaders and environmental groups.

#### **1.3.2.2 Issues Identified during Scoping**

The scoping process revealed several key items of concern to the interested parties who provided comments. The following items summarize key issues resulting from internal and public scoping. The scoping process is documented in the NMFS Scoping Report for this project.

The following key issues of public concern were expressed:

- Inclusion of an alternative to evaluate the use of groundwater from the Bull Run watershed to help meet temperature requirements
- Socioeconomic effects of implementing the HCP, including any anticipated impacts to water rates
- Anticipated effects of the HCP on habitat conditions in the Bull Run River
- Compliance with the Clean Water Act and the ESA

## 1.4 Relationship to Other Plans, Regulations, and Laws

Many Federal, state, and local statutes, regulations, and policies govern the activities proposed for ITP coverage under the Bull Run HCP. Development of the Bull Run HCP and related EIS are regulated primarily by the ESA and NEPA. Key Federal and state permits and regulatory consultation requirements that are likely to govern development or implementation of the Bull Run HCP are summarized in Table 1.4-1. In addition, Table 1.4-1 includes other Federal permits and consultations that may be required over the term of the ITP. It should be noted that the Bull Run HCP project requirements for permits and environmental review and consultation might change during the EIS review process as discussions with involved agencies proceed.

Table 1.4-1 Permits, approvals, and environmental review and consultation requirements potentially required for the Proposed Action Alternative

Permit/Consultation	Oversight Agency	Projects that Trigger Permit/Consultation Requirements
Clean Water Act Section 404 Permits	Oregon Department of State Lands U.S. Army Corps of Engineers	Several conservation measures could have removal/fill activity in the beds and banks of rivers.
National Historic Preservation Act Section 106 Consultation	State Historic Preservation Officer	Cultural Resources Management Plan is required to protect historical properties and archaeological resources that may be impacted by the HCP conservation measures.
Clean Water Act Section 401 Water Quality Certification	Oregon Department of Environmental Quality	Certification is required for individual activities subject to Section 404 Permits.
Clean Water Act 402 Construction Stormwater Permit	Oregon Department of Environmental Quality	Compliance with statewide general permit (preparation of erosion control plan) required for all construction activities affecting one or more acres
Special Use Permit	Mt. Hood National Forest	Individual activities on lands under Forest Service management

## 1.5 Organization of this EIS

Section 2.0 summarizes the proposed action and presents the alternatives evaluated in this EIS. The affected environment for each resource area is described in Section 3.0 and the environmental consequences and mitigation measures for significant impacts are described in Section 4.0. Section 5.0

includes a discussion of cumulative impacts, the remaining sections include a list of preparers (Section 6.0), a distribution list (Section 7.0), and a list of references (Section 8.0).

As described above, this EIS is being prepared for the Bull Run HCP. The full text of the Bull Run HCP is incorporated by reference into this document. Section 2.0 of this EIS, Proposed Action and Alternatives, provides a summary of the Bull Run HCP.

